

**NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES
BISMARCK, NORTH DAKOTA
July 1, 2015**

Amended IM 5242

TO: County Social Service Directors
Economic Assistance Policy Regional Representatives
Economic Assistance Policy Quality Control Reviewers

FROM: Maggie Anderson, Executive Director
North Dakota Department of Human Services

SUBJECT: Policy Clarifications for Non-ACA Medicaid – IRA's, Asset Assessments and Community Spouse Asset Allowance

ATTACHMENTS: Attachment #1 – Annuity Policy

PROGRAMS: Non-ACA Medicaid

EFFECTIVE: Immediately

RETENTION: Until superseded

SECTIONS AFFECTED: 510-05-70-30 - Excluded Assets
510-05-35-90 - Application for Other Benefits
510-05-85-05 - Income Considerations
510-05-70-45-30 - Annuities Purchased or Changed on or After February 8, 2006
510-05-65-20 - Community Spouse Asset Allowance
510-05-65-45 - Asset Assessment Requirements

This IM is being amended to add a section of Questions and Answers regarding the Annuity Policy since the issuance of the original IM.

IM 5206 which was effective April 1, 2014, changed policy to exclude funds held in Individual Retirement Plans (IRA's) and Roth Individual Retirement Plans (IRA's) provided they meet the qualified retirement criteria established by the Internal Revenue Service (IRS), 26 U.S.C., which almost all do. Based on this change in policy, we must list the IRA's on the Asset Assessment, but exclude the value in the 'Total Assets' amount.

However, even though we are excluding IRA's as a countable asset, based on policy at 510-05-35-90, Application for Other Benefits, as a condition of eligibility, applicants and recipients (including spouses and financially responsible absent parents) must take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits, to which they are entitled, unless they can show good cause for not doing so. Annuities, pensions, retirement, and disability benefits include, but are not limited to, veterans' compensation and pensions; old age, survivors, and disability insurance benefits; railroad retirement benefits; and unemployment compensation.

Individuals may have 'good cause' for not making these streams of income available such as:

- a. Receipt of the annuity, pension, retirement, or disability benefit would result in a loss of health insurance coverage; or
- b. An employed or self-employed individual who has not met their full retirement age chooses not to apply for Social Security early retirement or widows benefits.

Note: Application for needs based payments (e.g. SSI, TANF, etc.) cannot be imposed as a condition of eligibility.

If an individual does NOT have 'good cause', and reaches their full retirement age, or has a disability that precludes them from earning a living, they MUST begin drawing a stream of income from the IRA. To do this, they must roll the IRA over into an annuity. Once annuitized, it becomes an annuity and policy at 510-05-70-45, Annuities, applies, including it needs to be irrevocably annuitized to make the stream of income available to meet the annuity policy and making the Department of Human Services (DHS) the irrevocable beneficiary up to the amount of Medicaid benefits paid on behalf of either spouse.

Note: A copy of the beneficiary change form must be received back from the company holding the annuity, verifying the change in beneficiary (irrevocably to DHS), before the client can be determined eligible. If you need assistance with a tax id number or having a state representative sign the document, please forward to Medicaid Policy Division to have this completed.

If the individual chooses not to rollover their IRA into an annuity, the individual will not be eligible for non-ACA Medicaid as they have failed to meet the eligibility criteria in 510-05-35-90, Application for Other Benefits, and 510-05-85-05 (1), Income Considerations, as they are not making all income available.

Community Spouse Asset Allowance

Once the institutionalized or HCBS spouse has been determined eligible, the community spouse is no longer subject to the community spouse asset

allowance. However, assets of the community spouse are subject to the disqualifying transfer provisions and may not be given away or transferred for less than fair market value without causing ineligibility for the institutionalized spouse.

In addition, should the Community Spouse require care in a medical institution, a nursing facility, a swing bed, or in the state hospital, the Spousal Impoverishment provisions no longer apply UNLESS the total length of the Community Spouses stay is anticipated to be less than a full calendar month.

Miscellaneous Policy Clarifications and Reminders

1. When completing an Asset Assessment, at the time of application, and at the time of each review:
 - a. The NDRIN and Motor Vehicle interfaces must be checked for potential countable assets.
 - b. Enter the physical or legal address of the home on the Asset Assessment. If there is a TRANSFER ON DEATH Deed (TOD) enter TOD in front of the address. A copy of the TOD deed must be attached to the Asset Assessment when sending the Asset Assessment to the State Medicaid Policy Unit.
Ex: TOD 123 Main St, Bismarck, ND 58505
2. We are changing where completed Asset Assessments are to be sent.
 - Instead of sending the Asset Assessment to the Legal Advisory Unit, please send them to State Medicaid Policy.
 - When sending in the Asset Assessment to the State Medicaid Policy Unit, please attach all verifications/deeds of the countable assets listed on the Asset Assessment.
 - After the State Medicaid Policy Unit reviews the Asset Assessment, a copy will be forwarded to the Legal Advisory Unit for future Estate Recovery purposes.
3. Upon approval of a case, the SFN 52, Spousal Asset Log MUST be completed and sent to the State Medicaid Policy Unit. Retain a copy for your case file.
4. All Asset Assessments, Annuities and IRA's where the individual IS or MUST make income available must be reviewed by the State Medicaid Policy Unit. Send them to the Medicaid Policy group mailbox box at: -Info-DHS Medicaid Policy< hccpolicy@nd.gov>

Reminder: Applicants and recipients should not be provided financial advice. They must pursue financial advice from individuals who work in that field.

Note: A copy of the Annuity Policy, included in Attachment #1 must be provided to applicants and recipients who have IRA's and Annuities.

Based on the clarifications in this IM, if you are aware of any cases that have been processed incorrectly, please review and correct.

If you have questions, please contact your Regional Representative.

Annuity Policy Questions and Answers

July 1, 2015

Question #1: Can the institutionalized spouse transfer ownership of an excluded IRA to the community spouse, who then rolls it over to an annuity and have the income stream?

Response #1: An institutionalized spouse is allowed to transfer ownership of assets to the community spouse without resulting in a Disqualifying Transfer. Once the HH makes application and prior to determination of eligibility, the IRA must be converted to an annuity, annuitized, and monthly income counted. The amount of monthly income that must be counted may affect the client share as well as amount deemed to the community spouse.

NOTE: An **Individual** Retirement Account (IRA) can only be owned by one person and cannot be jointly owned with a spouse. The owner cannot transfer their IRA to a spouse or another person except under two circumstances; in a divorce settlement or through an inheritance. Money can be withdrawn from the IRA which can be given to the spouse, but that involves transferring cash rather than the IRA itself.

Question #2: Can the owner of the IRA choose to cash it in rather than making an income stream available?

Answer #2: Yes. However, by cashing it in, the amount received becomes a countable liquid asset.

Question #3: Current policy at 510-05-35-90, Application for Other Benefits states:

1. *As a condition of eligibility, applicants and recipients (including spouses and financially responsible absent parents) must take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits, to which they are entitled, unless they can show good cause for not doing so. Annuities, pensions, retirement, and disability benefits include, but are not limited to, veterans' compensation and pensions; old age, survivors, and disability insurance benefits; railroad retirement benefits; and unemployment compensation.*
2. *Individuals may have 'good cause' for not making these streams of income available such as:*
 - a. *Receipt of the annuity, pension, retirement, or disability benefit would result in a loss of health insurance coverage; or*

- b. An employed or self-employed individual who has not met their full retirement age chooses not to apply for Social Security early retirement or widows benefits.*

If an individual's circumstances do not meet the 'good cause' reasons listed above, would the individual be required to convert their IRA to an annuity and annuitize it?

Response #3: Yes.

Question #4: Define what is meant by 'full retirement age'?

Response #4: Full retirement age is determined by the income source.

- For Social Security Benefits, the individual's full retirement age is defined by SSA.
- If an individual is disabled, full retirement age is the individual's age at the time the individual becomes disabled.
- If the individual is not working, full retirement age is the individual's age at the time the benefit is available.

Question #5: Explain what is meant by 'good cause' under b. above, if the individual is employed or self-employed?

Response #5: If the individual is employed with the employer that they have their retirement benefits through, if their employment does not allow them to access their retirement even if they are at full retirement age, the 'good cause' under b. would be met.

If the individual is self-employed and not disabled, the individual would need to access their retirement funds upon reaching their full retirement age as defined above.

Question #6: Would the fact that the individual may incur a penalty when changing the IRA to an annuity constitute a "good cause" reason?

Response #6: No. However, in most instances where we would require an individual to annuitize their IRA they may meet a 'good cause' reason allowed in the plan which will allow them to annuitize it early without a penalty.

Question #7: Are the “good cause” reasons listed in policy the only “good cause” reasons allowed?

Response #7: Yes. However, should the client provide a reason that appears to be ‘good cause’, please send to Medicaid State policy for a decision.

Question #8: If both the institutionalized spouse and the community spouse own IRAs, are both required to roll the IRAs into an annuity and annuitize them and name DHS as the beneficiary?

Answer #8: Yes. They would both be required to roll the IRAs into an annuity unless they meet the “good cause” requirements under 510-05-35-90, Application for Other Benefits. As a result of the community spouse rolling his/her IRA into an annuity and obtaining a stream of income, the amount of the institutionalized spouse’s income that can be deemed to the Community Spouse will be reduced.

Question #9: If only the community spouse has an IRA, does the IRA need to be rolled into an annuity, annuitize, and name DHS as the beneficiary?

Response #9: YES

Question #10: Do both the community and institutionalized spouse need to name the Department of Human Services (DHS) as the beneficiary?

Response #10: The community spouse must irrevocably name the Department of Human Services as the primary beneficiary of the annuity following his/her death. However, the institutionalized spouse can name the community spouse, or a minor or disabled child.

Note: The Annuity Beneficiary Designation document on the last page of this IM explains who is required to name the Department of Human Services (DHS) as the beneficiary.

Question #11: If a community spouse has a \$308,000 IRA account, has not annuitized it, and withdraws money from this account monthly, but not the same amount each month (\$5,000 one month, then \$3500, \$6100, then \$4000) does this community spouse have to convert the IRA to an annuity since he is using this asset to pay for his monthly expenses?

Response #11: Yes, all IRA’s must be converted to an annuity, and annuitized, prior to a Medicaid eligibility determination. The annuity must provide for level monthly payments and return the full principal and interest

within the annuitant's life expectancy and has a guaranteed period that is equal to at least 85% of the annuitant's life expectancy.

Question #12: Is it mandatory that the IRA be converted to an annuity, or if we can see that the client is withdrawing money out of the IRA to pay expenses, does that satisfy the requirement that the client make the asset available?

Response #12: Yes. ALL IRA's must be converted to annuities and annuitized. The IRA itself is excluded as a countable asset when completing the Asset Assessment. However, it must annuitized and provide a stream of income prior to authorization of Medicaid eligibility.

Question #13: Are there certain timeframes the annuities have to be set up to pay (for instance, the remaining life expectancy of the client), or can they set up an annuity that pays out for 30 years even if the client is already 80 years old?

Response #13: The annuity must be annuitized based on the life expectancy tables, so the amount of the monthly income from the converted IRA will be based on the owner's age.

Question #14: Are there minimum requirements that the annuities have to satisfy, so we can let the households know what we require when they apply?

Response #14: Yes, there are minimum requirements and these are listed in the Medicaid Policy Manual at 510-05-70-45, Annuities. The annuity meets all of the following conditions:

- i. The annuity is irrevocable and cannot be assigned to another person;
- ii. The issuing entity is an insurance company or other commercial company that sells annuities as part of the normal course of business;
- iii. The annuity provides for level monthly payments;
- iv. The annuity will return the full principal and interest within the annuitant's life expectancy and has a guaranteed period that is equal to at least 85% of the annuitant's life expectancy;

Note: It is important to provide a copy of the annuity policy to the individuals (See Attachment #1). Feel free to explain the annuity policy. However, county staff must not provide financial advice.

Question #15: Why is State Medicaid Policy requiring IRA's be sent to State Medicaid Policy for review?

Response #15: The State Medicaid Policy Unit is requesting all IRA's that are converted to annuities to be sent to the State Medicaid Policy Unit for review, to

ensure that the annuity is correctly set up, with the appropriate options, timeframes and beneficiaries.

Question #16: Will the State Medicaid Policy Unit make the determination on whether an IRA has to be converted to an annuity, or is this the county's responsibility?

Response #16: All IRA's must be converted to annuities when someone applies for Medicaid benefits unless they have "good cause". However, the reason we are requesting all IRA's be sent to the State is included in Response #15.

Note: An IRA is an excluded asset but the face value of that IRA MUST be listed as an excluded asset in the system and on the Asset Assessment.

Question #17: Must all annuities be reviewed by Medicaid Policy prior to the case being approved?

Response #17: Yes, ALL annuities must be sent to State Medicaid policy for review by Medicaid policy prior to case approval.

Question #18: If at application it is determined the household should be rolling their IRA to an annuity, should a copy of the IRA be sent to State Medicaid policy at the point the client is informed they need to roll the monies to an annuity?

Response #18: If the county has a question on an IRA, it should be sent to State Medicaid policy along with the questions. If there are no questions, the household must begin working with their financial representative to annuitize this IRA. Once annuitized, the annuity would be sent to State Medicaid policy for review prior to authorization of Medicaid eligibility.

Question #19: What if the household refuses to roll an IRA into an Annuity?

Response #19: If the household refuses to roll the IRA into an annuity, the case will be denied unless the reason meets one of the "good cause" requirements under 510-05-35-90, Application for Other Benefits.

Question #20: If, in the month of application, the individual starts the process to annuitize the account but the transaction cannot be completed before the end of the month of the application, would the individual be eligible for the application month, the month the process was started, or are they not eligible until the annuity has been appropriately set up?

Response #20: If the individual was not previously informed that an IRA needed to be annuitized, eligibility would begin the month in which the

individual started the process, provided the individual submits verification of the date the process started.

Example: An individual applies for Medicaid in June 2015 and immediately begins the process to annuitize their IRA. The process does not get completed until July 2015. The individual would be eligible for Medicaid in the month of June as long as verification was provided that the process started in June.

Question #21: If the individual request coverage for the three prior months (THMP), can eligibility be determined since the IRA has not yet been annuitized?

Response #21: YES. During the THMP Months, the IRA would be an exempt asset. We would not consider any income for the THMP months as it has not yet been annuitized.

Question #22: When would we begin counting payments as income?

Response #22: The annuity payments would begin to be counted when they will actually begin receiving them.

Example: An IRA was annuitized in June 2015 and will begin receiving monthly payments in July 2015. The 1st month the payments would begin to be counted as income is July 2015.

Question #23: If we identify ongoing cases that have IRA's that need to be rolled to an annuity, the IM says we need to make corrections. Should these cases be sent an advance notice to close, informing them on the closing notice they must roll their IRA into an annuity, annuitize it and name DHS as the beneficiary by the end of the month or their case will close?

Response #23: Yes. The completed and signed Annuity Beneficiary Designation form must be received from the company verifying DHS was named the beneficiary before determining if the case can remain open.

Question #24: If the individual get this process completed prior to the closure date, can the case remain open and the 'client share' increased?

Response #24: Yes. The income from the annuity will be used to calculate continued eligibility and if the increased income from the annuity changes a client share, since it is a lesser action than the closing, the 'client share' can be increased.

Question #25: If the individual does not get the IRA rolled to an annuity prior to the end of the month, does the case closes and would the individual need to reapply?

Response#25: Yes, unless the individual can show the timeframe for rolling the IRA over is beyond the individual's control. In this situation, an additional 30 days could be granted.

Question #26: When the individual reapplies, at what point can eligibility be authorized?

Response #26: The individual is not eligible again until the IRA is rolled over, annuitized, DHS named as the beneficiary and the State has reviewed the document and responded to the county that the review is completed and instructions provided to the county on how to consider the Annuity. In addition, the completed and signed Annuity Beneficiary Designation form must be received from the company verifying DHS was named the beneficiary before determining if the case can remain open.

Question #27: If an IRA was counted on an asset assessment and should not have been, what should be done?

Response #27: A new Asset Assessment must be completed and the new information must be provided to the household.

Question #28: Can an IRA be designated for burial and be excluded?

Response #28: An IRA cannot be designated for burial. However, The client may withdraw the funds and place these funds in another type of account such as a savings, CD or funeral home fund, etc. They may not be left in the IRA or annuity and designated for burial.

Annuity Beneficiary Designations

For ALL annuities purchased after August 1, 2005 and/or changed after February 8, 2006, the law requires: "the Department of Human Services is irrevocably named as the primary beneficiary of the annuity following the death of the applicant and the applicant's spouse, not to exceed the amount of benefits paid by Medicaid. If a minor child who resided and was supported financially by the applicant or spouse, or disabled child, survives the applicant and spouse, any payments from the annuity will be provided to those individuals."

Note: This applies to annuities held by the Institutionalized spouse. The Department is named in the first position period on annuities held by the community spouse.

We have seen some beneficiary designations worded as follows: The Department of Human Services is irrevocably named as the primary beneficiary of this annuity following the death of John Doe and Jane Doe not to exceed the amount of benefits paid by Medicaid for John Doe."

The above wording is NOT sufficient. It does not allow for any Medicaid benefits that may have also been paid out for Jane Doe prior to her death.

The acceptable wording for a beneficiary designation would be:

"The Department of Human Services is irrevocably named as the primary beneficiary of this annuity following the death of John Doe and Jane Doe not to exceed the amount of benefits paid by Medicaid for John Doe and Mary Doe."

Or

"The Department of Human Services is irrevocably named as the primary beneficiary of this annuity following the death of the annuitant and the annuitant's spouse not to exceed the amount of benefits paid by Medicaid for annuitant and the annuitant's spouse."

Note also that "The Department may be named as the remainder beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if such spouse or child disposes of any such remainder for less than fair market value." The Department must be named as the primary beneficiary in the first position on an annuity held by a community spouse.